

JUL 10 2008

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THOMAS G. CALABRESE,

Plaintiff - Appellant,

v.

DONALD C. WINTER,** Secretary of the
Navy,

Defendant - Appellee.

No. 06-55605

D.C. No. CV-05-00021-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted June 18, 2008***

Before: LEAVY, HAWKINS, and W. FLETCHER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Donald C. Winter is substituted for his predecessor, Gordon R. England, as Secretary of the Navy, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Thomas G. Calabrese appeals pro se from the district court judgment dismissing on grounds of untimeliness his federal action alleging wrongful termination and disability discrimination by the Secretary of the Navy. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

We do not consider Calabrese's contention that his claims were subject to equitable tolling, because Calabrese waived that issue by not raising it in his pleadings or in his oppositions to defendant's motions for summary judgment. *See Ramirez v. Galaza*, 334 F.3d 850, 859 n.6 ("We have consistently held that a party may not raise new issues of fact on appeal after declining to present those facts before the trial court.").

We deny all pending motions.

AFFIRMED.